

Syllabus

IN THE MATTER OF

EXCELSIOR LABORATORY, INC., AND DOROTHY FLATTER, TRADING AS DOROTHY GOSEWISCH, AND OTTO R. FLATTER

COMPLAINT, FINDINGS AND ORDER, AND DISSENT IN PART IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 26, 1914

Docket 5394. Complaint, Oct. 18, 1945—Decision, June 1, 1948

While garlic has been used in folk medicine for centuries, and there is some scientific opinion to the effect that it possesses therapeutic value in the treatment of hypertension, said view is rejected by the great weight of modern scientific opinion, the present consensus among experts being that it is wholly without therapeutic value in such cases, either for the treatment of the condition itself or the symptoms. The contrary view, it appears, is based largely upon the results of certain experiments in which adequate controls were not maintained, as a result of which the reliability of the experiments is subject to serious doubt.

Where a corporation and two officers thereof, who controlled and directed its policies and practices, engaged in the manufacture and interstate sale and distribution of a medicinal preparation known as Gosewisch's Garlic Tablets, through advertisements in newspapers and trade journals, including such statements as "Why be distressed needlessly when you can now get the effective aid of garlic for relief, without fear of offending with garlic breath," etc.—

- (a) Falsely represented that their said Gosewisch's Garlic Tablets constituted a competent and effective treatment for the symptoms of hypertension (high blood pressure) including the symptoms of dullness, tiredness, nervousness, dizziness, and involuntary naps;

Notwithstanding the fact that garlic has no therapeutic value in the treatment of hypertension or its symptoms; and even if it had, said product would be still wholly ineffectual because of the negligible amount of garlic therein contained; and

- (b) Represented falsely through use of the word "garlic" as a part of the trade name for their product that there was a sufficient amount of said substance therein to possess substantial therapeutic value;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition and therapeutic value of product concerned and thereby induce it to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Pencke for the Commission.

Complaint

44 F. T. C.

Frank & Frank, of New York City, for Excelsior Laboratory, Inc.
Mr. David Robinson, of Staten Island, New York, for Dorothy Flatter and Otto R. Flatter.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Excelsior Laboratory, Inc., a corporation, Dorothy Flatter, also trading under the name of Dorothy Gosewisch, and O. R. Flatter, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, thereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Excelsior Laboratory, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Dorothy Flatter, who employs the name of Dorothy Gosewisch in the operation of said business, and Otto R. Flatter are individuals and president, secretary and treasurer and vice president, respectively, of said Excelsior Laboratory, Inc. The principal office and place of business of said corporate and individual respondents is located at 453 Richmond Terrace, Staten Island, city and State of New York.

Said individual respondents, in their respective activities, as officers of said corporation, formulate, control, and direct all of the policies and practices of said corporate respondent.

PAR. 2. Respondent, Excelsior Laboratory, Inc., is now, and has been for more than 1 year last past, engaged in the sale and distribution in commerce between and among the various States of the United States and the District of Columbia of a medicinal preparation known and described as Gosewisch Odorless Garlic Tablets. Respondents cause said product, when sold, to be transported from their said place of business in the State of New York to purchasers thereof in various States of the United States other than the State of New York, and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product, the re-

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spondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated, and have caused and are now causing the dissemination of, false advertisements concerning their said product by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, deceptive, and misleading statements, representations, and claims contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by United States mails, and by means of circulars, newspaper advertisements, and other advertising material, are the following:

HIGH
BLOOD
PRESSURE
SYMPTOMS

Dull—tired,
nervous, dizzy,
involuntary naps

Why be distressed needlessly when you can now get the effective aid of garlic for relief, without fear of offending with garlic breath. GOSEWISCH ODORLESS GARLIC TABLETS, time-proven by thousands of users, really are GARLIC MADE SOCIABLE. Whiffless, pleasant, chewable like candy. Use them regularly in this handy form 60¢ and 1.10. Mfr. Excelsior Laboratory, Staten Island, N. Y.

PAR. 4. Through the use of the foregoing statements and representations and others similar thereto, not specifically set out herein, respondents represent and have represented that their said garlic tablets constitute a competent and effective treatment for the symptoms of high blood pressure including such symptoms as dullness, tiredness, nervousness, and dizziness and involuntary naps.

PAR. 5. The aforesaid statements and representations disseminated by respondents are false, misleading, and deceptive. In truth and in fact, said tablets do not constitute a competent or effective treatment for the symptoms of high blood pressure, nor are they of any therapeutic value in the treatment of conditions described as dullness, tiredness, nervousness, dizziness, involuntary naps, or any other symptom or condition which may be caused by or connected with high blood pressure. Respondents' product contains, at most, only a trace of oil of garlic, and is of no therapeutic value whatever in the treatment of any pathological condition. Moreover, the use of garlic or oil of garlic is wholly ineffective in the treatment or control of high blood

pressure or high blood pressure symptoms, regardless of the amount of oil of garlic consumed.

The use of the trade name Gosewisch Odorless Garlic Tablets is wholly unwarranted and misleading for the reason that the use of the word "garlic" implies that there is a sufficient amount of garlic or oil of garlic contained in respondents' said tablets to constitute a therapeutic dose. In truth and in fact, the amount of garlic or oil of garlic in respondents' said product is not sufficient to be of any therapeutic value whatever.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief, to purchase substantial portions of respondents' product.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 18, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing by respondent, Excelsior Laboratory, Inc., of its answer to the complaint (no answer having been filed by the other respondents), testimony, and other evidence in support of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. No evidence was introduced by respondents in opposition to the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, brief in support of the complaint, brief in opposition to the complaint filed on behalf of respond-

ent, Excelsior Laboratory, Inc., and oral argument; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Excelsior Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 453 Richmond Terrace, Staten Island, N. Y. Respondents, Dorothy Flatter (who trades under the name of Dorothy Gosewisch) and Otto R. Flatter were for several years immediately preceding August 30, 1945, president and treasurer, and vice president and secretary, respectively, of the respondent corporation. They formulated, controlled, and directed the policies and practices of the corporation. Respondent, Dorothy Flatter, owned all of the capital stock of the corporation and on August 30, 1945, sold all of the stock to another individual. Since that date the individual respondents have had no connection with the corporation nor with the business conducted by it.

PAR. 2. Respondent, Excelsior Laboratory, Inc., is now, and all of the respondents have been, engaged in the manufacture and sale of a medicinal preparation known as Gosewisch's Garlic Tablets. They have caused their product, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning their product by means of the United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents have also disseminated and have caused the dissemination of advertisements concerning their product by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of such advertisements disseminated and caused to be disseminated, as set forth above, by means of the United States

mails and by insertion in newspapers and trade journals, was the following:

HIGH
BLOOD
PRESSURE
SYMPTOMS

Dull—tired,
nervous, dizzy,
involuntary naps

Why be distressed needlessly when you can now get the effective aid of garlic for relief, without fear of offending with garlic breath. **GOSEWISCH'S ODORLESS GARLIC TABLETS**, time-proven by thousands of users, really are **GARLIC MADE SOCIABLE**. Whiffless, pleasant, chewable like candy. Use them regularly in this handy form 60¢ and \$1.10. Mfr. Excelsior Laboratory. Staten Island, N. Y.

PAR. 4. Through the use of these statements and others similar thereto, respondents have represented that their product is a competent and effective treatment for the symptoms of hypertension (high blood pressure), including the symptoms of dullness, tiredness, nervousness, dizziness, and involuntary naps.

PAR. 5. At the request of the Commission, respondents' product, which is in tablet form, was subjected to chemical and microscopic analysis and study by experts in the United States Food and Drug Administration. The tablets were found to consist almost entirely of sugar. They are practically odorless but have a faint taste of garlic when chewed. Two hundred of the tablets yielded only three-ten-thousandths of a gram of garlic oil, and the amount of garlic plant tissues in the tablets was likewise found to be negligible. In fact, the amount of garlic oil and garlic plant tissues in the tablets was so small that it was with difficulty that the experts were able to identify the ingredients at all.

PAR. 6. Garlic has been used in folk medicine for centuries. While there is some scientific opinion to the effect that garlic possesses therapeutic value in the treatment of hypertension, this view is rejected by the great weight of modern scientific opinion. The present consensus among experts is that garlic is wholly without therapeutic value in cases of hypertension, either for the treatment of the condition itself or the symptoms thereof. It appears that the contrary view is based largely upon the results of certain experiments in which adequate controls were not maintained. Because of the absence of such controls, the reliability of the experiments is subject to serious doubt. The Commission therefore finds that garlic has no therapeutic value in the treatment of hypertension or its symptoms.

Even if garlic did possess therapeutic value in the treatment of hypertension or the symptoms thereof, respondents' product still would be wholly ineffectual because the amount of garlic therein is negligi-

ble—so small that it can have no therapeutic value, either in the treatment of hypertension or its symptoms or in the treatment of any other pathological condition.

PAR. 7. The Commission therefore finds that the representations made by respondents with respect to their product, as set forth in paragraphs 3 and 4 hereof, are erroneous and misleading and constitute false advertisements.

PAR. 8. Respondents' advertisements are false for the further reason that the use by respondents of the word "Garlic" as a part of the trade name for their product constitutes a representation that there is a sufficient amount of garlic in the product to possess substantial therapeutic value. As set forth above, the amount of garlic in the product is insufficient to possess any therapeutic value for any purpose.

PAR. 9. The use by respondents of these false advertisements has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the composition and therapeutic value of respondents' product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, Excelsior Laboratory, Inc., testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, brief in support of the complaint and brief in opposition thereto on behalf of said respondent, and oral argument; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Excelsior Laboratory, Inc., a corporation, and its officers, and respondents Dorothy Flatter and Otto R. Flatter, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with

Dissent in Part

the offering for sale, sale, or distribution of respondents' medicinal preparation now designated "Gosewisch's Garlic Tablets," or any preparation containing substantially similar properties, under whatever name sold, to forthwith cease and desist from:

1. Disseminating or causing to be disseminated by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which:

(a) Represents, directly or by implication, that respondents' preparation possesses any therapeutic value in the treatment of high blood pressure or the symptoms thereof, or any other pathological condition.

(b) Represents, directly or by implication, that garlic possesses any therapeutic value in the treatment of high blood pressure or the symptoms thereof.

(c) Uses the word "garlic" or any other word of similar import in the product name of any preparation not containing substantial quantity of garlic; or otherwise uses the word "Garlic," or any simulation thereof, in such manner as to represent or imply, when such is not the fact, that a preparation contains garlic in substantial quantity.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondents' preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 (a), 1 (b), or 1 (c) above.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Commissioner Mason dissenting in part, and Commissioner Ferguson voting in the negative as to Paragraph 1 (c) of this order.

COMMISSIONER MASON DISSENTS IN PART

Paragraph 1 (c) of the order inhibits the use of the word "garlic." This inhibition is based on the finding that the amount of garlic contained in the respondent's product is not sufficient to be of therapeutic value. The prohibition of the use of the name of an ingredient on the grounds that it, though present, has no therapeutic value is not, in my opinion, required in this case. Such a prohibition should extend only to the use of the name in connection with therapeutic claims.

Complaint

IN THE MATTER OF
ISAAC JOSEPH OLSHER, TRADING AS MID-WEST
NOVELTY CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5521. Complaint, Dec. 3, 1947—Decision, June 1, 1948

Where an individual engaged in the interstate sale and distribution of cigarette lighters, clocks, radios, fountain pens, glassware, cameras, electric razors, and other assortments of articles, so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to the purchasing public, a typical assortment consisting of nine articles and three packs of cigarettes together with a punch board for use in their sale and distribution under a plan by which, at a cost of 5 cents, a customer selecting certain numbers by chance received a self-starting electric clock, flashlight, or other article or one or two packs of cigarettes, and last sale on the board also received such a clock, others receiving nothing for their money—

Sold such assortments to dealers and retailers by whom, as direct or indirect purchasers, they were exposed and sold to the purchasing public in accordance with the aforesaid sales plan, involving a game of chance or sale of a chance to procure one of the articles concerned at much less than its normal retail price; and thereby

Supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by said sales plans and element of chance involved, and were induced thereby to buy and sell his said merchandise:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

Before *Mr. John W. Addison*, trial examiner.

Mr. J. W. Brookfield, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Isaac Joseph Olsher, an individual, trading as Mid-West Novelty Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows: